



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0304; FMCSA-2019-0048; FMCSA-2019-0128]

California and Washington Meal and Rest Break Rules; Notice of Waiver Provision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of waiver provision.

SUMMARY: FMCSA provides notice that the Agency will consider petitions for waiver of its December 21, 2018, and January 13, 2020, decisions preempting the State of California's Meal and Rest Break (MRB) rules for certain drivers of property- and passenger-carrying commercial motor vehicles (CMVs) and its November 17, 2020, decision preempting the State of Washington's MRB rules for certain drivers of property-carrying CMVs.

DATES: While petitions for waiver may be submitted at any time, FMCSA requests that any petitions for waiver of the above referenced preemption determinations be submitted by November 13, 2023. FMCSA will publish any petitions for waiver that it receives and will provide an opportunity for public comment with respect to the petitions.

ADDRESSES: You may submit a petition for waiver to the Federal Docket Management System Docket No. FMCSA-2018-0304, Docket No. FMCSA-2019-0048, or Docket FMCSA-2019-0128 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov, insert the docket number FMCSA-2018-0304, docket number FMCSA-2019-0048, or docket FMCSA -2019-0128 in the keyword box, and click "Search." Follow the online instructions for submitting a petition for waiver.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, West Building, Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: Tracy M. White, Enforcement and Litigation Division; FMCSA Office of Chief Counsel; 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 493-0349; Tracy.White@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9317 or (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2018, FMCSA granted petitions filed by the American Trucking Associations and the Specialized Carriers and Rigging Association, and determined that California's MRB rules, as applied to property-carrying CMV drivers subject to FMCSA's hours of service (HOS) regulations, are preempted under 49 U.S.C. 31141. (Docket No. FMCSA-2018-0304; 83 FR 67470; Dec. 28, 2018). On January 13, 2020, FMCSA granted a petition filed by the American Bus Association and determined that California's MRB rules, as applied to passenger-carrying CMV drivers subject to FMCSA's HOS regulations, are also preempted under 49 U.S.C. 31141. (Docket No. FMCSA-2019-0048; 85 FR 3469; Jan. 21, 2020). On November 27, 2020, FMCSA granted a petition filed by the Washington Trucking Association and determined that

Washington's MRB rules, as applied to property-carrying CMV drivers subject to FMCSA's HOS regulations, are preempted under 49 U.S.C. 31141. (Docket No. FMCSA-2019-0128, 85 FR 73335; Nov. 17, 2020). In each decision, FMCSA determined that the MRB rules are laws on CMV safety, that they are more stringent than the Federal regulations, and that they meet each of the three potential criteria for preemption under 49 U.S.C. 31141(c)(4)-(5). See 83 FR 67470, 85 FR 3469; 85 FR 7333. On January 15, 2021, the U.S. Court of Appeals for the Ninth Circuit denied petitions for review challenging the first preemption decision. *Int'l Bhd. of Teamsters, Local 2785 v. FMCSA*, 986 F.3d 841 (9th Cir. 2021), cert. denied sub nom. *Trescott v. Fed. Motor Carrier*, No. 20-1662, 2021 WL 4507755 (Oct. 4, 2021). The State of California filed a petition for review in the Ninth Circuit in March 2020 challenging the second preemption decision, and the court has held that case in abeyance. *People of the State of Cal. ex rel. Bonta v. FMCSA*, No. 20-70706 (9th Cir.). The State of Washington filed a petition for review in the Ninth Circuit challenging the third preemption decision but voluntarily dismissed the case in August 2022. *State of Washington v. FMCSA*, No. 20-73730 (9th Cir.).

II. Applicable Law

A. California's MRB Rules

Under section 512 of the California Labor Code, employers must provide non-exempt employees a 30-minute meal break if they work more than 5 hours in a day, and employees who work a shift of 10 hours or more are entitled to a second 30-minute meal break. Under the California Code of Regulations (CCR) section 11090(12), employers are required to provide rest periods for non-exempt employees who work 3½ or more hours in a day. Employees are entitled to a 10-minute rest period for each 4 hours, or a substantial fraction thereof, that they work in a day. To the extent possible, these breaks are to be taken in the middle of each 4-hour period. 8 CCR section 11090(12); California Industrial Welfare Commission Order No. 9-2001. California law provides that an

employer shall not require an employee to work during a mandated meal or rest break and provides for additional pay as a remedy for violating that prohibition. Cal. Labor Code 226.7(b)-(c).

B. Washington's MRB Rules

Under the Washington Department of Labor and Industries' regulations in section 296-126-092 of Washington's Administrative Code (WAC), employers must provide employees a meal period of at least 30 minutes that commences after the second hour and before the fifth hour after the shift commences. WAC 296-126-092(1)-(2). In addition, Washington's MRB rules provide for a 10-minute rest period "for each four hours of working time" and must occur no later than the end of the third working hour. WAC 296-126-092(4). The rest period must be scheduled as near as possible to the midpoint of the 4 hours of working time, and no employee may be required to work more than 3 consecutive hours without a rest period.¹

C. Federal Preemption Under the Motor Carrier Safety Act of 1984

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations; (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation. 49 U.S.C. 31141(c)(1).

If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. 31136, the State

¹ Department of Labor and Industries, Administrative Policy ES.C.6.1, paragraph 11, https://lni.wa.gov/workers-rights/_docs/esc6.1.pdf.

law or regulation may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce. Id. section 31141(c)(4). In deciding whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce. Id. section 31141(c)(5). The Secretary's authority under 49 U.S.C. 31141 is delegated to the FMCSA Administrator by 49 U.S.C. 113(f) and 49 CFR 1.87(f).

Pursuant to 49 U.S.C. 31141(d), FMCSA may grant a waiver of an FMCSA preemption decision. Under this provision, “[a] person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section.” Further, “[t]he Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.” Id. section 31141(d)(1).

III. Petitions for Waiver of California and Washington Meal and Rest Break Preemption Determinations

FMCSA provides notice that the Agency will consider any petition seeking waiver of the Agency's decisions preempting (1) California's MRB rules for drivers of property-carrying CMVs (Docket No. FMCSA-2018-0304; 83 FR 67470), (2) California's MRB rules for drivers of passenger-carrying CMVs (Docket No. FMCSA-2019-0048; 85 FR 3469), or (3) Washington's MRB rules for drivers of property-carrying CMVs (Docket No. FMCSA-2019-0128, 85 FR 73335). Section 31141(d) requires that a petition for waiver demonstrate to the Agency's satisfaction that a waiver from Federal preemption is in the public interest and is consistent with the safe operation of CMVs. A

petition for waiver need not contend that the Agency erred in determining that the California and Washington MRB rules are laws on CMV safety, that they are more stringent than the Federal HOS regulations, or that they meet any or all the criteria for preemption under 31141(c)(4)-(5), and the Agency encourages waiver petitioners to include arguments that do not depend on a conclusion that the Agency's preemption determinations were erroneous.

The Agency requests that any waiver petition address the following issues, in addition to any other relevant issues:

1. Whether and to what extent enforcement of a State's meal and rest break laws with respect to intrastate property-carrying and passenger-carrying CMV drivers has impacted the health and safety of drivers.
2. Whether enforcement of State meal and rest break laws as applied to interstate property-carrying or passenger-carrying CMV drivers will exacerbate the existing truck parking shortages and result in more trucks parking on the side of the road, whether any such effect will burden interstate commerce or create additional dangers to drivers and the public, and whether the applicant intends to take any actions to mitigate or address any such effect; and
3. Whether enforcement of a State's meal and rest break laws as applied to interstate property-carrying or passenger-carrying CMV drivers will dissuade carriers from operating in that State, whether any such effect will weaken the resiliency of the national supply chain, and whether the applicant intends to take any actions to mitigate or address any such effect.

Any person may file a petition for waiver in the appropriate docket specified above or may send it to FMCSA at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Robin Hutcheson,
Administrator.

